

STATE OF IOWA  
PROPERTY ASSESSMENT APPEAL BOARD

**Louise A. Foutch,**  
Petitioner-Appellant,

**v.**

**Polk County Board of Review,**  
Respondent-Appellee.

**ORDER**

**Docket No. 11-77-1134**  
**Parcel No. 312/03201-035-000**

On April 30, 2013, the above-captioned appeal came on for hearing before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. Petitioner-Appellant Louise A. Foutch was self-represented. Assistant County Attorney David Hibbard represented the Board of Review. The Appeal Board now, having examined the entire record, heard the testimony, and being fully advised, finds:

***Findings of Fact***

Louise A. Foutch is the owner of property located at 13102 Timberline Drive, Urbandale, Iowa. The real estate was classified residential on the January 1, 2011, assessment and valued at \$431,400, representing \$99,900 in land value and \$331,500 in improvement value. Foutch protested to the Board of Review on the grounds that 1) the assessment was not equitable as compared with the assessments of other like property under Iowa Code section 441.37(1)(a)(1); 2) the property was assessed for more than the value authorized by law under section 441.37(1)(a)(2); 3) there was an error in the assessment under section 441.37(1)(a)(4); and 4) there was a change downward in the value since the last assessment under sections 441.37(1)(b) and 441.35(2). In a re-assessment year, a challenge based on downward change in value is akin to a market value claim. *See Dedham Co-op. Ass'n v. Carroll*

*County Bd. of Review*, 2006 WL 1750300 (Iowa Ct. App. 2006). Foutch asserted the correct value was \$390,000. She claimed errors in the assessment included an incorrect grade; an improper classification as a two-story; and incorrect measurements. The Board of Review granted the protest, in part, and reduced the assessment to \$429,600.

Foutch then appealed to this Board reasserting her claims.

According to the property record card, the subject property is a two-story home<sup>1</sup> built in 2004. It has 2426 square feet of above-grade living area; a 1513 square-foot, unfinished basement; a 196 square-foot deck; a 32 square-foot open porch; and a 718 square-foot attached garage. It sits on a 0.560-acre site. The grade of the property is reported as 0-05<sup>2</sup> (Excellent); and, the condition is reported as normal.

Foutch provided six properties she considered comparable for her equity claim.

<u>Address</u>	<u>Assessed Value</u>	<u>Grade</u>
13108 Timberline Drive	\$424,600	1+00
13109 Beechwood Drive	\$429,700	1+00
3706 131st Street	\$418,200	1+05
3709 131st Street	\$410,500	1+05
3715 131st Street	\$416,900	1+05
3727 131st Street	\$415,800	1-05

Only one of the six properties had a recent sale: 3727 131st Street sold in July 2010 for \$472,000. Foutch did not provide evidence of the fair market value for the other properties, which is required to develop a sales ratio analysis for an equity claim. We note the only property with a sales price, sold for \$56,200 higher than its assessment. Ultimately, there was limited testimony regarding an equity claim; therefore, we give this evidence no consideration.

Foutch also contended several errors exist in the assessment. Primarily, she does not believe the grade of the subject property is correct. Grade is a term used in assessment to describe the quality of an improvement. IOWA DEPARTMENT OF REVENUE, 2008 IOWA REAL PROPERTY APPRAISAL

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<sup>1</sup> As previously noted, Foutch claims this is an error and that the subject property is a one-and-one-half story.

<sup>2</sup> Foutch also contends the grade is inappropriate.

MANUAL, Grading Section, pp. 3-1 – 3-28. Foutch asserts the subject property was a spec home and not custom-built. She did not provide any evidence, however, of what she believes to be the correct grade. Additionally, Foutch asserts the home is only one-and-one-half stories; and, that the second floor measurements were incorrect. The Board of Review Appraiser Analysis indicated there was a correction made to the sketch. However, the record is not clear on what that correction was, or if Foutch's concerns about the grade or style were addressed. Again, Foutch did not address any of these claims at her hearing before this Board. Because we lack evidence regarding the asserted errors, we are unable to reach a conclusion on her error claim.

Foutch submitted three appraisals in support of her over assessment claim at hearing, and two additional appraisals were included in the certified record.

Kevin Kesterson of Kesterson Appraisal and Consulting, West Des Moines, Iowa completed two of the appraisals. The first version of his appraisal has an effective date of January 1, 2009. Kesterson developed only the sales comparison approach and included six sales and one listing. Without discussing the appraisal in detail, we find that because its effective date is January 1, 2009, it is not relevant evidence for a January 1, 2011, market value assessment, in this case, and we give it no consideration.

At hearing, Foutch provided a new appraisal completed by Kesterson, with an effective date of January 1, 2011. This appraisal appears to be a near replication of the 2009 appraisal. Kesterson again only developed the sales comparison approach and offered seven sales for consideration. Five of the comparables were the same as those he used in the 2009 appraisal, and these sales occurred in 2008. Kesterson also included two recent sales that occurred in 2010. His report stated resale data in the area was limited "due to the few number of recent sales of highly similar properties in the subject's neighborhood;" however, there was no substantive analysis of the new sales or explanation why he relied on five dated sales rather than search for newer ones. Furthermore, even if sales were limited

and his use of 2008 sales was reasonable, he made no time adjustments and did not explain why a time adjustment was unnecessary. In comparison to the other appraisals in evidence, we do not find Kesterson's 2011 appraisal the most reliable primarily based on the fact that he used dated sales, which were also used in a previous appraisal, with minimal explanation. We, therefore, give this appraisal no weight.

Foutch also provided an appraisal completed by Shawna A. Neal of Neal Appraisal Services, Inc., West Des Moines, Iowa. Neal's appraisal concludes a value of \$375,000 as of February 23, 2010. She developed the sales comparison and cost approach to value. She considered five closed sales and one active listing. Neal, like Kesterson, relied on sales from 2008 and 2009 for her value opinion. We note the record includes two additional appraisals, each with a January 1, 2011, valuation date; and each use sales from 2010. Because of this, we do not find it necessary to rely on Neal's appraisal with a 2010 effective date and older sales.

Lastly, Foutch offered an appraisal completed by James Brockbank of Brockbank and Associates, Des Moines, Iowa. Brockbank's appraisal concludes a value of \$372,500 as of January 1, 2011. He testified on Foutch's behalf. Brockbank developed only the sales comparison approach. He considered four sales that occurred in 2010. After making adjustments for differences between the comparable properties and the subject property, the indicated range of value is \$338,000 to \$403,500. Brockbank provided explanation at hearing regarding his selection of comparables and application of adjustments. He explained that when he receives an appraisal assignment, he initially views the property, takes notes, and drives the neighborhood. During his inspection, he observed several things about the property. In his opinion, the laundry room and walk-in closet of the master bedroom were small for a home of this grade; he felt the master bedroom and bath were standard; and he noted nice fenestration and other enhancing features of the subject property.

Brockbank explained he tried to stay within the same general neighborhood, based on the assessor's defined neighborhoods, when selecting comparable properties. He also tried to select properties of similar style. He testified that he classified the subject as a one-and-a-half story and tried to find sales of similar style, location, and quality. He included two, two-story homes due to a lack of one-and-a-half story sales of similar quality and size. He explained that he did not adjust for style and design in this assignment. Regarding the land value, Brockbank explained that he uses the assessors land value as a "good" starting point then looks to the market to see if he can confirm that value. He made other adjustments for bath count, living area, and other differences. We find Brockbank's explanation for adjustments lacking and not entirely reflective of actual market actions. For instance, he explained that he ran a regression program for a defined area to find "every sale and every listing" in a particular year. He performs this regression analysis on the greater neighborhood, then again in the "micro neighborhood," which he defines as "roughly a mile radius." He then uses this information to develop adjustments. He admitted it can come up with some "pretty outrageous numbers;" but they use it to establish range of values or median values. His analysis does not seem to identify comparable properties, but instead a universe of sales, which may or may not be similar to the subject. Additionally, when answering questions regarding how he arrived at adjustments, Brockbank was not persuasive in his responses. For example, Comparable 4 in his report has a similar size site, but he applied a \$33,000 upward adjustment. When asked to explain what the adjustment reflected, he was unable to answer and could "not specifically say" what the lot value difference was attributable to. Regarding Comparable 3 to which he made an upward \$51,000, he asserted that he "believed it was the location." Ultimately, he was unable to explain in a persuasive manner, the need for the lot adjustments that he had applied in his report. .

Foutch also testified that when she purchased the subject property from Regency construction, Regency purchased her prior home for the full listing price she was asking. For this reason, she does

not believe the June 2005 sale price of \$429,990, represented an arm's length transaction. Because we do not find a 2005 sale to be relevant to a 2011 value, we decline to reach the issue of whether it was a normal transaction.

The Board of Review submitted an appraisal completed by William Pruett of Rally Appraisal, West Des Moines, Iowa.<sup>3</sup> Pruett's appraisal has an effective date of January 1, 2011, and concludes a final opinion of value of \$405,000. Pruett developed only the sales comparison approach to value and considered four sales to reach his conclusion. He explained that he performed an extensive market analysis of Timberline neighborhood, where the subject property is located. He asserts Timberline is a pocket area of higher valued homes. He further asserts that looking at the entirety of the area (a one-mile radius) would result in a flawed analysis because it would include significantly lower quality and lower valued properties. As a result, he selected sales from within the subject development or other competing pocket developments.

In his opinion, contrary to Brockbank's, the size of the master bedroom closet is not an indicative measurement of the quality of the home. He testified that the master bath and kitchen of the subject property were good quality, and that he considered all of the quality materials and craftsmanship of the subject property as a determining factor for selecting his comparables.

Pruett adjusted the sales for differences in elements compared to the subject. He agrees that cost may be a starting point for adjustments, however explained, "cost has less to do with market reaction." Ultimately, he applies adjustments based on market reaction to that element not simply because of cost. He based his adjustments on paired sales analysis and judgment.

He explained Comparable 2 required an adjustment to its site, in part, because it was larger than the subject. However, because the lot is a corner lot, but has side street access and extensive landscaping, this offset some of its adjustment that may have been made in a different situation. He

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<sup>3</sup> Foutch also introduced the Pruett appraisal as evidence.

did not make adjustments for differences in style, because he believes the subject property competes with all of his comparables in terms of utility, which is the measure of the market. He concluded a tight range of value between roughly \$390,000 and \$417,000. He explained in detail why he made adjustments, providing examples of different factors that he took into consideration in his analysis.

Two of his comparable properties (Comparables 3 and 4) offer the most similar size to the subject property, but set the lower end of the range. When asked why these sales were not given the most consideration in his analysis, he explained the size was considered within his reconciliation. However, he believes the location of the subject is a value-adding factor that is supported by the higher sales prices and adjusted sales prices of Comparables 1 and 2 that are both located within 0.30 miles of the subject. We find Pruett to be persuasive in his understanding of the market, the selection of comparable properties for analysis, in supporting his adjustments, and defending his conclusions. Moreover, we find his appraisal to be the best evidence in the record of the fair market value of the subject as of January 1, 2011.

### ***Conclusion of Law***

The Appeal Board applied the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2011). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). However, new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment*

*Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. § 441.21(1)(b). "Market value" essentially is defined as the value established in an arm's-length sale of the property. *Id.* Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If sales are not available, "other factors" may be considered in arriving at market value. § 441.21(2). The assessed value of the property shall be one hundred percent of its actual value. § 441.21(1)(a).

To prove inequity, a taxpayer may show that an assessor did not apply an assessing method uniformly to similarly situated or comparable properties. *Eagle Food Centers v. Bd. of Review of the City of Davenport*, 497 N.W.2d 860, 865 (Iowa 1993). Alternatively, a taxpayer may show the property is assessed higher proportionately than other like property using criteria set forth in *Maxwell v. Shivers*, 257 Iowa 575, 133 N.W.2d 709 (1965). The *Maxwell* test provides that inequity exists when, after considering the actual and assessed values of comparable properties, the subject property is assessed at a higher proportion of its actual value. *Id.* at 579-80. The *Maxwell* test may have limited applicability now that current Iowa law requires assessments to be at one hundred percent of market value. § 441.21(1). Foutch did not provide sufficient evidence to support an equity claim under either test.

In an appeal alleging the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(2), the appellant has a two-fold burden. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). First, the appellant must show that the assessment is excessive. Iowa Code § 441.21(3); *Boekeloo*, 529 N.W.2d at 276-77. Second, the appellant must provide evidence of the property's correct value. *Boekeloo*, 529 N.W.2d at 276-77.



Foutch provided five appraisals. The first Kesterson appraisal and the Neal appraisal are irrelevant, in part, because the effective date of value was not reflective of the issue before us, which is a January 1, 2011, assessment. The second Kesterson appraisal appeared to be a near replication of the first report, with several of the same sales from 2008. The second version of Kesterson's appraisal included two new 2010 comparables, but lacked any explanation or rationale for the use of five 2008 sales. We find the appraisal lacked credibility and gave it no consideration. Lastly, Foutch submitted the Brockbank appraisal. When questioned, Brockbank was unable to clearly explain the need for several adjustments that he had applied in his report. Additionally, while we recognize a market value claim may consider sales from different jurisdictions, he seemed unfamiliar with the sales and the market area, and was unable to identify which of his four sales was located in Dallas County rather than Polk County. We find his lack of understanding of the market area, and his inability to support the adjustments he applied limits the credibility of his opinion.

The Board of Review submitted an appraisal by William Pruett whom we found to be persuasive in his understanding of the market, the selection of comparables for analysis, in supporting his adjustments, and defending his conclusions. We find Pruett's appraisal to be the best evidence in the record of the fair market value of the subject property as of January 1, 2011.

Foutch also claimed errors exist in the assessment under section 441.37(1)(a)(4). Because we lack evidence regarding the alleged errors and what the correction should be, we are unable to reach a conclusion on this issue.

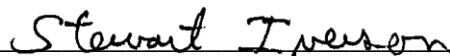
THE APPEAL BOARD ORDERS the assessment of Louise A. Foutch's property located at 13102 Timberline Drive, Urbandale, Iowa, is modified to a total value of \$405,000, allocated as \$99,900 in land value and \$305,100 in improvement value as of January 1, 2011. The Secretary of the Property Assessment Appeal Board shall mail a copy of this Order to the Polk County Auditor and

all tax records, assessment books and other records pertaining to the assessments referenced herein on the subject parcels shall be corrected accordingly.

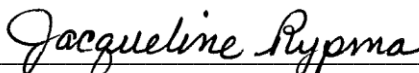
Dated this 31st day of May 2013.



Karen Oberman, Presiding Officer



Stewart Iverson, Board Chair



Jacqueline Rypma, Board Member

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AUDITOR

Certificate of Service

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on May 31, 2013.

By: ☒ U.S. Mail ☐ FAX  
☐ Hand Delivered ☐ Overnight Courier  
☐ Certified Mail ☐ Other



Signature \_\_\_\_\_